

MS PROPRIETARY\_Flowdowns\_12-13-2024

**FLOW DOWN CLAUSES AND SPECIAL CONTRACT PROVISIONS  
U.S. Government Clauses**

**Prime Contract No.: MS PROPRIETARY  
Customer Contract No.: 10014327  
Type of Agreement: U.S. Government Contract DPAS Rating: DO-A1  
Date of Creation: 12-13-2024**

***The following customer contract requirements apply to any Purchase Order referencing the above U.S. Government prime contract number and are hereby incorporated into the Purchase Order by full text or by reference with the same force and effect as if they were given in full text. The terms and conditions of the versions of the “Flowdown of U.S. Government Contract Clauses Under U.S. Government Contracts” and “Flowdown Updates” documents in effect on the date of the particular Order shall also apply. These documents are made available at the RTX Supplier Site. The full text of FAR/DFARS clauses may be accessed at <https://www.acquisition.gov/>.***

In all provisions and clauses listed herein, terms shall be revised to suitably identify the party to establish Supplier’s obligations to Buyer and to the Government, and to enable Buyer to meet its obligations under the prime contract. Without limiting the generality of the foregoing, and except where further clarified or modified below, the term “Government” and equivalent phrases shall mean “Buyer”, the term “Contracting Officer” shall mean “Buyer’s Purchasing Representative”, the term “Contractor” or “Offeror” shall mean “Supplier”, “Subcontractor” shall mean “Supplier’s Subcontractor” under this Purchase Order, and the term “Contract” shall mean this “Purchase Order”. For the avoidance of doubt, the words “Government” and “Contracting Officer” do not change: (1) when a right, act, authorization or obligation can be granted or performed only by the Government or the prime contract Contracting Officer or duly authorized representative, such as in FAR 52.227-1 and FAR 52.227-2 or (2) when title to property is to be transferred directly to the Government. Supplier shall incorporate into each lower tier contract issued in support of this Purchase Order all applicable FAR and DFARS provisions and clauses in accordance with the flow down requirements specified in such clauses. Nothing in this Purchase Order grants Supplier a direct right of action against the Government. If any of the following FAR or DFARS clauses do not apply to this Purchase Order, such clauses are considered to be self-deleting.

These FAR, DFAR, and special contract provisions are subject to change. Buyer or Buyer Affiliates reserve the right to add or update any FAR or DFAR clause or special contract provision based on customer contract directives.

Capitalized words used herein and not otherwise defined shall have the meanings ascribed to them in the Terms and Conditions.

The requirements below are in accordance with the U.S. Government prime contract and are not modified by Buyer for each individual Supplier. Supplier will remain at all times responsible for providing to any government agency, Buyer, or Buyer’s customer, evidence of compliance with the requirements herein or that such requirements are not applicable to the extent satisfactory to the requesting party.

**CLAUSES INCORPORATED BY REFERENCE:**

**FAR CLAUSES**

<b>CLAUSE</b>	<b>TITLE</b>
52.203-12	Limitation on Payments to Influence Certain Federal Transactions.
52.203-13	Contractor Code of Business Ethics and Conduct.
52.203-17	Contractor Employee Whistleblower Rights.
52.203-19	Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements.
52.203-3	Gratuities.
52-203.5	Covenant Against Contingent Fees.
52.203-6	Restrictions on Subcontractor Sales to the Government.
52.203-6	Restrictions on Subcontractor Sales to the Government (Alternate I)
52.203-7	Anti-Kickback Procedures.
52.204-10	Reporting Executive Compensation and First-Tier Subcontract Awards.
52.204-13	System for Award Management Maintenance.
52.204-18	Commercial and Government Entity Code Maintenance.
52.204-19	Incorporation by Reference of Representations and Certifications.
52.204-2	Security Requirements.
52.204-21	Basic Safeguarding of Covered Contractor Information Systems.
52.204-23	Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities.
52.204-24	Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment
52.204-25	Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
52.204-27	Prohibition on a ByteDance Covered Application.
52.209-3	First Article Approval – Contractor Testing
52.209-3	First Article Approval – Contractor Testing (Alternate II)
52.209-4	First Article Approval – Government Testing
52.209-4	First Article Approval – Government Testing (Alternate I)
52.209-10	Prohibition on Contracting With Inverted Domestic Corporations.
52.209-6	Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment.
52.209-9	Updates of Publicly Available Information Regarding Responsibility Matters.
52.211-5	Material Requirements.
52.211-8	Time of Delivery
52.211-8	Time of Delivery (Alternate I)
52.211-8	Time of Delivery (Alternate II)
52.211-8	Time of Delivery (Alternate III)
52.211-9	Desired and Required Time of Delivery
52.211-9	Desired and Required Time of Delivery (Alternate I)
52.211-9	Desired and Required Time of Delivery (Alternate II)
52.211-9	Desired and Required Time of Delivery (Alternate III)
52.211-15	Defense Priority and Allocation Requirements.
52.215-11	Price Reduction for Defective Certified Cost or Pricing Data - Modifications.
52.215-13	Subcontractor Certified Cost or Pricing Data - Modifications.
52.215-14	Integrity of Unit Prices
52.215-15	Pension Adjustments and Asset Reversions.
52.215-18	Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.
52.215-2	Audit and Records-Negotiation
52.216-10	Incentive Fee.
52.216-16	Incentive Price Revision-Firm Target.
52.216-16 ALT 1	Incentive Price Revision-Firm Target.

CLAUSE	TITLE
52.216-7	Allowable Cost and Payment.
52.216-25	Contract Definitization
52.216-25	Contract Definitization (Alternate I)
52.217-6	Option for Increased Quantity.
52.217-7	Option for Increased Quantity-Separately Priced Line Item.
52.217-8	Option to Extend Services.
52.217-9	Option to Extend the Term of the Contract.
52.219-16	Liquidated Damages - Subcontracting Plan.
52.219-28	Post-Award Small Business Program Rerepresentation (Alternate I)
52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
52.219-8	Utilization of Small Business Concerns.
52.219-9	Small Business Subcontracting Plan.
52.219-9	Small Business Subcontracting Plan. - (Alternate II)
52.219-10	Incentive Subcontracting Program.
52.222-19	Child Labor-Cooperation with Authorities and Remedies
52.222-21	Prohibition of Segregated Facilities.
52.222-26	Equal Opportunity.
52.222-3	Convict Labor.
52.222-35	Equal Opportunity for Veterans.
52.222-36	Equal Opportunity for Workers with Disabilities.
52.222-37	Employment Reports on Veterans.
52.222-40	Notification of Employee Rights Under the National Labor Relations Act.
52.222-50	Combating Trafficking in Persons.
52.222-50	Combating Trafficking in Persons (Alternate I)
52.222-54	Employment Eligibility Verification.
52.223-11	Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons.
52.223-18	Encouraging Contractor Policies to Ban Text Messaging While Driving.
52.225-13	Restrictions on Certain Foreign Purchases.
52.225-18	Place of Manufacture.
52.225-25	Prohibition on Contracting With Entities Engaging in Certain Activities or Transactions Relating to Iran – Representation and Certifications.
52.227-1	Authorization and Consent.
52.227-10	Filing of Patent Applications-Classified Subject Matter.
52.227-2	Notice and Assistance Regarding Patent and Copyright Infringement.
52.227-3	Alternate I Patent Indemnity. (Alternate I)
52.229-3	Federal, State, and Local Taxes.
52.230-2	Cost Accounting Standards.
52.230-6	Administration of Cost Accounting Standards.
52.232-16	Deviation 2020-O0010 Progress Payments (DEVIATION 2020-O0010)(Revision 1)
52.232-17	Interest.
52.232-20	Limitation of Cost.
52.232-22	Limitation of Funds.
52.232-39	Unenforceability of Unauthorized Obligations.
52.232-40	Providing Accelerated Payments to Small Business Subcontractors.
52.233-3	Protest after Award.
52.233-3	Protest after Award.
52.233-4	Applicable Law for Breach of Contract Claim.
52.234-1	Industrial Resources Developed Under Title III, Defense Production Act.
52.242-1	Notice of Intent to Disallow Costs.
52.242-13	Bankruptcy.
52.242-15	Stop-Work Order.
52.242-15 A	Stop-Work Order. (Alternate I)
52.242-2	Production Progress Reports.
52.242-3	Penalties for Unallowable Costs.

CLAUSE	TITLE
52.242-4	Certification of Final Indirect Costs.
52.242-5	Payments to Small Business Subcontractors.
52.243-1	Changes-Fixed-Price.
52.243-1	Alternate II Changes-Fixed-Price. - (Alternate II)
52.243-2	Changes-Cost-Reimbursement.
52.243-2	Alternate II Changes-Cost-Reimbursement. - (Alternate II)
52.243-3	Changes-Time-and-Materials or Labor-Hours.
52.243-6	Change Order Accounting.
52.244-6	Subcontracts for Commercial Products and Commercial Services.
52.245-1	Government Property.
52.245-1	Alternate I Government Property. (Alternate I)
52.245-9	Use and Charges.
52.246-2	Inspection of Supplies-Fixed-Price.
52.246-2 A	Alternate I Inspection of Supplies-Fixed-Price. (Alternate I)
52.246-26	Reporting Nonconforming Items.
52.246-3	Inspection of Supplies-Cost-Reimbursement.
52.246-4	Inspection of Services-Fixed-Price.
52.246-5	Inspection of Services-Cost-Reimbursement.
52.246-6	Inspection-Time-and-Material and Labor-Hour.
52.246-6 A	Alternate I Inspection-Time-and-Material and Labor-Hour. (Alternate I)
52.249-2	Termination for Convenience of the Government (Fixed-Price).
52.249-6	Termination (Cost-Reimbursement).
52.249-6	Alternate IV Termination (Cost-Reimbursement). (Alternate IV)
52.252-2	Clauses Incorporated by Reference.
52.252-4	Alterations in Contract.

## **DFARS CLAUSES**

CLAUSE	TITLE
252.203-7001	Prohibition on Persons Convicted of Fraud or Other Defense-Contract-Related Felonies.
252.203-7002	Requirement to Inform Employees of Whistleblower Rights.
252.203-7004	Display of Hotline Posters.
252.204-7000	Disclosure of Information.
252.204-7009	Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.
252.204-7012	Safeguarding Covered Defense Information and Cyber Incident Reporting.
252.204-7015	Notice of Authorized Disclosure of Information for Litigation Support.
252.204-7018	Prohibition on the Acquisition of Covered Defense Telecommunications Equipment or Services.
252.204-7020	NIST SP 800-171 DoD Assessment Requirements.
252.208-7000	Intent to Furnish Precious Metals as Government-Furnished Material
252.211-7003	Item Unique Identification and Valuation.
252.219-7003	Small Business Subcontracting Plan (DoD Contracts).
252.222-7006	Restrictions on the Use of Mandatory Arbitration Agreements.
252.223-7008	Prohibition of Hexavalent Chromium.
252.225-7001	Buy American and Balance of Payments Program
252.225-7009	Restriction on Acquisition of Certain Articles Containing Specialty Metals.
252.225-7012	Preference for Certain Domestic Commodities.
252.225-7048	Export-Controlled Items.
252.225-7056	Prohibition Regarding Business Operations with the Maduro Regime.
252.226-7001	Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

CLAUSE	TITLE
252.227-7013	Rights in Technical Data-Noncommercial Items.
252.227-7014	Rights in Noncommercial Computer Software and Noncommercial Computer Software Documentation.
252.227-7015	Technical Data--Commercial Items.
252.227-7016	Rights in Bid or Proposal Information.
252.227-7017	Identification and Assertion of Use, Release, or Disclosure Restrictions.
252.227-7019	Validation of Asserted Restrictions-Computer Software.
252.227-7027	Deferred Ordering of Technical Data or Computer Software.
252.227-7030	Technical Data--Withholding of Payment.
252.228-7005	Mishap Reporting and Investigation Involving Aircraft, Missiles, and Space Vehicles.
252.234-7002	Earned Value Management System.
252.234-7004	Cost and Software Data Reporting System
252.239-7000	Protection Against Compromising Emanations.
252.239-7001	Information Assurance Contractor Training and Certification
252.239-7010	Cloud Computing Services.
252.239-7016	Telecommunications Security Equipment, Devices, Techniques, and Services.
252.239-7018	Supply Chain Risk.
252.243-7001	Pricing of Contract Modifications.
252.244-7000	Subcontracts for Commercial Items.
252.244-7001	Contractor Purchasing System Administration.
252.245-7005	Management and Reporting of Government Property.
252.246-7001	Warranty of Data.
252.246-7003	Notification of Potential Safety Issues.
252.246-7007	Contractor Counterfeit Electronic Part Detection and Avoidance System.

**CLAUSES INCORPORATED IN FULL TEXT:**

**H-0001, Commercial Computer Software License(s) (March 2018)**

In accordance with this clause, the Offeror/Contractor (hereinafter, "Contractor") shall provide license agreement information for all COMMERCIAL computer software licenses to be obtained on behalf of or transferred to the US Government under this contract. In this arrangement, the Government may ultimately become the Licensee in certain COMMERCIAL computer software licenses, which software is specifically defined at DFARS 252.227-7014(a)(1). The Government will acquire commercial computer software or COMMERCIAL computer software documentation under the license(s) that are customarily provided to the public. However, in order to permit the Government to become a Licensee in the COMMERCIAL computer software licenses, said licenses must conform to the terms and conditions specified below. The terms and conditions in this clause do not apply to Open Source.

COMMERCIAL computer software licenses shall be provided to the Government Contracting Officer concurrent with proposal submission to the extent said licenses are known at the time an offer is submitted to the Government--or otherwise as soon as said licenses become known by the Contractor. The terms and conditions specified below shall take precedence over any and all conflicting or otherwise inconsistent terms and conditions defined in any and all COMMERCIAL computer software licenses intended for the Government to become a Licensee. In order to simplify the process of conforming software licenses to the terms and conditions specified herein, it is not necessary to edit or otherwise modify the licenses--rather the terms and conditions specified herein shall be hereby incorporated by reference into the licenses or otherwise implied therein.

Applicability to subcontractor(s), vendor(s) or supplier(s)--whenever any COMMERCIAL computer software or computer software documentation is to be obtained from a subcontractor, vendor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontract(s) or other contractual instrument(s), and require its subcontractor, vendor or supplier to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's, vendor's or supplier's rights in said computer software or computer software documentation.

Accordingly, in executing this contract the Contractor hereby consents and agrees to the terms and conditions herein and agrees to obtain similar consent and agreement from any subcontractor, vendor or supplier ultimately providing COMMERCIAL computer software or software documentation to the Government for which the Government may become a Licensee. The terms and conditions required to permit any COMMERCIAL computer software licenses to be transferred to the Government (e.g., Government to become a Licensee) include the following: [Notice: At the Government's sole discretion, the Contractor may be excused from any one or more of the following terms and conditions]

1. Any software license shall be perpetual in nature and shall not permit the Licensor to unilaterally terminate the contract or license for the Licensor's convenience.
2. The software license shall not reference that the Licensee is using certain software products in any notification to the public without express written permission from the Government (e.g., no publicity rights permitted).
3. The Licensee is a Federal entity governed by Federal Statutes, Case Law, and Federal Regulations. Therefore, the software license shall not make reference to binding the Licensee through any laws of any municipality, state, or foreign country.
4. The software license shall not include any clauses indicating a right to enter the premise of Licensee for the purpose of auditing the use of any software license, as the Licensee cannot allow an auditor physical access to the Licensee's facility due to security concerns. The software license may permit a written notice to be provided to Licensee indicating a substantiated belief that the Licensee is not using the software within the terms described in the license and the Licensee may consider conducting its own internal audit and providing a certified statement of its findings to an appropriate Requestor.
5. The software license shall not include any clauses that in any way restrict assignment to the Government and restrict a Licensee (Contractor) from maintaining its status as a Licensee while at the same time permitting the usage of related software by the Government.
6. The license shall not comment on the entitlement to attorney fees in the event of a dispute.
7. The license shall not restrict the Government from using the product at various sites (i.e., applicable to a product-type license for a movable product, as opposed to a site-specific license for a non-movable product) nor use of the product by various Government agencies or third parties performing work on behalf of the Government under the MS PROPRIETARY In performance of the MS PROPRIETARY, Government personnel as well as Government contractors may use the software. Additionally, the software may be used at Government sites and Government contractor sites and the sites may change over time. Thus, the software license shall be flexible to accommodate this situation if applicable.
8. The license shall not include non-substitution language that would preclude or limit the Government from switching to another vendor/reseller or another product to fulfill MS PROPRIETARY requirements.
9. 9. The following clauses (and no other) shall supersede all dispute clauses in the software license agreement(s) and shall be operative in dispute resolution:
  - a. Since the Licensee is a Government entity, any dispute arising from or in connection with this agreement shall be subject to resolution in accordance with the Disputes Clause included in the basic contract or the Government may also consider resolving any disputes using an appropriate non-binding Alternate Dispute Resolution (ADR) remedy; and
  - b. The software license shall not include any injunctive relief clauses as the Licensor cannot prevent the Licensee from performing mission operations. However, the Licensor may seek monetary damages.

10. Contractor shall provide a listing of license renewal dates and associated fees/costs if applicable. Automatic renewal terms are not acceptable for any license associated with MS PROPRIETARY.
11. Contractor shall provide a listing and copies of all commercial computer software licenses related to this Government Contract MS PROPRIETARY.
12. The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)
  - a) Contract Line Item Number (CLIN); and
  - b) Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions.

party It should be understood that the Offeror/Contractor must provide sufficient information, so that a 3rd observer can readily determine where certain Commercial computer software corresponding to certain license(s) are physically located on the System to be delivered under the contract-to the extent that said Commercial computer software resides on the System.

13. The software license(s) shall not include any provisions that are inconsistent with "Requirements" defined in the present solicitation or any related contract.
14. The software license(s) shall not include any provisions operative to claim ownership rights in any Government Furnished Information (GFI) notwithstanding whether or not the GFI may have interacted with certain software associated with the software license(s)
15. The Government reserves the right to inspect or test any software, software documentation or service associated with the software license(s) for compliance with the requirements defined in the present solicitation or any related contract. In the event that said software, software documentation or service are deemed non-compliant with said requirements, the Government at its discretion shall be entitled to replacement, refund or equitable relief
16. Consistent with the terms and conditions of this clause, the terms described below shall also be incorporated by reference to all COMMERCIAL computer software licenses with advanced notice to and consent of applicable subcontractors, vendors or suppliers of said computer software licenses (if applicable), for which the Government may become a Licensee: "The Government agrees to the provisions of the present Software License, as set forth above and affixed as an attachment to this Government Contract MS PROPRIETARY, to the extent that the provisions of the Software License are consistent with Federal procurement law(s) and at least the Department of Defense Federal Acquisition Regulation Supplement (DFARS) section 227.7202 and said contract. In the event that any of the provisions of the present Software License are determined to be inconsistent with Federal procurement law(s); DFARS section 227.7202 and said contract, the parties to the present Software License hereby agree that said provision(s) shall be null and void. In the event that any of said provision (s) are rendered null and void, as described hereinabove, the remaining provision(s) of said License shall remain in full force and effect."

#### **H-0002, Government Rights in System Interface Technical Data/Software (October 2021)**

1. In accordance with this clause and applicable CDRLs, the Offeror/Contractor (hereinafter, "Contractor") shall deliver technical data and software relating to modular system interface(s) to the US Government under this contract. The associated Government license rights in said technical data or software relating to said modular system interface(s) shall be defined below in subsection 5.

2. Precedence: The terms and conditions specified below shall take precedence over any and all conflicting or otherwise inconsistent terms and conditions defined in any and all other documents ancillary to the present U.S. Government contract.
3. Flow-down provision: Applicability to subcontractor(s), vendor(s) or supplier(s) - whenever any technical data or software relating to any system interface(s) is to be obtained from a subcontractor, vendor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontract(s) or other contractual instrument(s), and require its subcontractor, vendor or supplier to do so, without alteration, except to identify the parties. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a subcontractor's, vendor's or supplier's rights in said technical data or software relating to any modular system interface(s).
4. Consent: Accordingly, in executing this contract the Contractor hereby consents and agrees to the terms and conditions herein and agrees to obtain similar consent and agreement from any subcontractor, vendor or supplier ultimately providing technical data and/or software relating to any modular system interface(s) to the Government for which the Government may become a Licensee.
5. The Government's license rights in said technical data or software (hereinafter collectively referred to as "Data") relating to said modular system interface(s) shall be defined as follows:
  - a. Modular system interfaces developed completely at Government expense-
    - i. The Government shall have an unlimited rights license in Data pertaining to a modular system interface developed exclusively at Government expense and used in a modular open system design or architecture; or
    - ii. The Government shall have an unlimited rights license in Data pertaining to a modular system interface; whereby said Data is defined as Form, Fit and Function (FFF) data, within the meaning of 10 U.S.C. 3771; DFARS 252.227-7013 or elsewhere in this contract.
  - b. Modular system interfaces developed with mixed Government and Private/Contractor expense-
    - i. The Government shall have a Government Purpose Rights license in Data pertaining to a modular system interface developed using any mixture of Government and Contractor expense and used in a modular open system design or architecture.
  - c. Modular system interfaces developed exclusively at Private/Contractor expense-
    - i. The Government shall have a Government Purpose Rights license in Data pertaining to a modular system interface developed exclusively using Contractor expense and used in a modular open system design or architecture. In this respect, the Contracting Officer shall negotiate with the contractor the appropriate and reasonable compensation for said license rights in said Data. Contractor shall submit a proposed compensation for said license rights under this subsection concurrent with proposal submission--to the extent that it is known or should be known at the time of proposal submission that the Government will obtain rights under this subsection.
6. The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)
  - a. Contract Line Item Number (CLIN); and



- b. Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions

a the It should be understood that the Offeror/Contractor must provide sufficient information, so that 3rd party observer can readily determine where certain Commercial computer software corresponding to certain license(s) are physically located on the System to be delivered under contract-to the extent that said Commercial computer software resides on the System.

Note: To view delivery obligations under this contract; please reference: Attachment 10 - Contractor Reference Architecture and Attachment 11 - Data Rights Assertion Table

### **H-0003, Modular Open System Architecture (MOSA) Technology Development Definitions and Contractor Responsibilities (October 2021)**

#### I. Definitions:

- a. Open Architecture: To be considered open, a system must be modular, interoperable, extensible, reusable, composable, maintainable, and must employ open standards for major system interfaces within the system deliverable (hardware and software).
- b. Open Standards: requires that at least the elements described below to be satisfied:
  - i. Widely used, consensus-based, published, and maintained by recognized standards organizations.
  - ii. Freely and publicly available under royalty-free terms.
  - iii. Free of all requirements for execution of a license agreement, non-disclosure agreement, grant, click through arrangement, or any form of paperwork, to deploy conforming implementations of the standard.
  - iv. Free of all requirements for other technology that fails to meet this "open standard" criteria.
  - v. All patents to the implementation of the standard are to be licensed under royalty-free terms for unrestricted use or covered by a promise of non-assertion when practiced by open-source software.
- c. Open Development Collaboration: requires that a team-based process be used to design, acquire, implement, deploy, and use the system deliverable. The team's collaboration, correspondence, and decisions shall be persistently documented using an online mechanism that provides read/write access to all team members. The contractor shall provide unlimited rights to the content placed in the on-line mechanism unless such content is appropriately marked in accordance with applicable clauses of this contract. Access to this content may be restricted by the Government to only members of the respective team, as may be deemed necessary by the government representatives.
- d. Open Source (Software): requires that the system deliverable be free of license restrictions (e.g., all royalties and other such fees for sale or use) preventing the DoD from giving, selling or in any way distributing the software as a component of an aggregate software distribution containing programs from several different sources. Source code must be included and allowed to be distributed in textual form as well as in compiled form. The license must allow for modifications and derivative works, and allow those changes to be distributed under the same terms as the license of the original software. The license must protect the integrity of the author's original source code. The license must require derivative works to carry a different name or version number from the original software. The license must require that the original source code be distributed as pristine based sources plus patches, so that "unofficial" changes (those made and added to the source by parties other than the original author) can be made available but easily distinguished from the base source. The rights attached to the software must be applicable to all whom the software is redistributed without the need for execution of an additional license by those parties. The rights attached to the software must be free from all dependencies on the software's being part of a particular software redistribution. The license must be free from all restrictions on other software that is distributed along with the licensed

software. The license must be free of all provisions that may be predicated on any individual technology or style of interface (The license must be technology-neutral.).

- e. Open Systems: requires the system deliverable to employ a modular open standard or open architecture design approach to provide for affordable change, enable evolutionary acquisition and rapid fielding of the system without interoperability issues with other presently fielded systems. Further in this regard, the system deliverable must use widely supported and consensus-based standards for its major system interfaces. Implementations of the components within the system deliverable must conform to open standard or open architecture interface specifications. The open standard or open architecture interface specifications of components included within the system deliverable must be fully defined, available to the public and be maintained according to group consensus.

II. Contractor responsibilities:

- a. The contractor is hereby required to use or otherwise incorporate, as appropriate, development practices, design procedures or architectures which conform to the following definitions, as defined above in sections 1 through 5 of this clause:
  - i. Open Architectures;
  - ii. Open Standards;
  - iii. Open Development Collaboration;
  - iv. Open Source (Software); and
  - v. Open Systems.

**H-0004, AFLCMC/WV, DELIVERY AND LICENSE RIGHTS FOR TECHNICAL DATA AND COMPUTER SOFTWARE NECESSARY FOR OPERATION, MAINTENANCE, INSTALLATION, AND TRAINING (OMIT AND FORM, FIT, FUNCTION (FFF) (Jun 2022)**

The following language clarifies the Parties' interpretation of the following clause:

- a. For commercial items and commercial computer software, the Parties agree that Contractor is not required to and will not deliver any detailed manufacturing and process data or software source code under H-0004.
- b. For items not developed with US government funding, the Parties agree that Contractor is not required to and will not deliver any detailed manufacturing and process data or source code under H-0004.
- c. The Parties agree that compliance with H-0004, clauses (II) & (III), does not require Contractor to deliver or provide technical data lower than the Line Replacement Unit ("LRU") level of detail for commercial items to meet the following objectives:
  - 1. Operation: technical data that enables the USG to operate a commercial item (or system incorporating a commercial item) to identify any functional characteristics and performance requirements of the item;
  - 2. Routine maintenance: technical data associated with maintenance and repair that would typically be performed by commercial customers without requiring item replacement; and
  - 3. Integration and installation: technical data sufficient to identify mating and attachment characteristics of commercial items for removal and re-installation.
- d. The Parties agree that compliance with H-0004, clauses (II) & (III), does not require Contractor to deliver or provide technical data lower than the LRU level of detail for items not developed with US government funding to meet the following objectives:

1. Operation: technical data that enables the USG to operate a commercial item (or system incorporating a commercial item) to identify any functional characteristics and performance requirements of the item;
2. Routine maintenance: technical data associated with maintenance and repair that would typically be performed by commercial customers without requiring item replacement; and
3. Integration and installation: technical data sufficient to identify mating and attachment characteristics of commercial items for removal and re-installation.

Definitions:

- I. "Required Data" includes all noncommercial and commercial: technical data, including technical data meeting the definition of detailed manufacturing or process data at DFARS 252.227-7013(a)(6) (DMPD); development tools (including compilers); computer software (including source code and scripts and libraries used by the source code); computer software documentation; computer databases, digital models and graphics pertaining to MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment that is required or used when conducting Operation, Maintenance, Installation, or Training (OMIT) activities and Form, Fit, Function data, regardless of whether such activities are performed by Air Force military, civilian, or contract personnel. "Required Data" also includes identifying, cataloging, stocking, sourcing, acquiring, procuring, replenishing, packaging, handling, storing, and transporting any MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment.
- II. "Operation" includes all procedures, guidance, and instructions for operating, testing, utilization of, familiarization of, emergency use of, and functional use of MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment to perform the intended functions.
- III. "Maintenance" includes all capabilities to maintain, sustain, inspect, test, service, adjust, troubleshoot, analyze, remove, replace, repair, install, disassemble, reassemble, or overhaul (to maintain in, or restore to, a serviceable condition) any MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment. Maintenance includes Depot-Level Maintenance, Organizational-Level Maintenance, and sustainment of the Required Data itself.
- IV. "Installation" includes infrastructure(s) such as facility planning, site surveys, maintenance facilities, supply chain management, test cells, test stands and benches, tools, support equipment, communications, data links, security, data information technology, and all other data and planning used in the initial standup and continued operations, training, sustainment, and maintenance at all operational sites as well as "Organizational-Level Maintenance" and "Depot-Level Maintenance" requirements in support of the MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment.
- V. "Training" includes formal and informal classroom, simulation, and supervised and unsupervised instruction in the operation, use, testing, supply chain management and

maintenance for the MS PROPRIETARY Weapon System and its subsystems, subassemblies, components and support equipment.

- VI. The contractor shall provide all Form, Fit and Function (FFF) data licensed rights in accordance with DFARS 252.227-7013. Consistent with the definitions included in 10 USC 3771; DFARS 252.227-7013 and /or DFARS Subpart 227.71, FFF data are further defined to include:
- a. Form data that enables MS PROPRIETARY engineering to identify source, size and configuration of items, and components if originally fielded articles are no longer available, maintainable or excessively costly to sustain and require replacement to keep the entire weapon system supportable;
  - b. Fit data that enables MS PROPRIETARY engineering to identify mating and attachment characteristics of items and components if originally fielded articles are no longer available, maintainable or excessively costly to sustain and require replacement to keep the entire weapon system supportable;
  - c. Function data that enables MS PROPRIETARY engineering to identify functional characteristics, and performance requirements of items and components if originally fielded articles are no longer available, maintainable or excessively costly to sustain and require replacement to keep the entire weapon system supportable;
  - d. All technical data that pertains to an item, component or process developed in whole or in part with federal funds; or data that is necessary for the segregation of an item, component or process from, or the reintegration of that item, component or process (or a physically or functionally equivalent item or process) with, other items or processes; and
  - e. All information related to or deriving from Interface Control Documents, to include hardware and software data.
- VII. "Depot-Level Maintenance" includes:
- a. installation, inspection, localization, isolation, disassembly, interchange, repair, reassembly, alignment, checkout;
  - b. maintenance performed, including modification, testing and reclamation, on material requiring repair, overhaul, or complete rebuild of parts, assemblies, subassemblies, and end items;
  - c. software maintenance; and
  - d. maintenance performed for continuous airworthiness.
  - e. "Depot-Level Maintenance" does not include the manufacture of new items but may include the overhaul or refurbishment of existing items.
- VIII. "Organizational-Level Maintenance" is on-equipment and off-equipment maintenance exclusively performed in the field, on the flight line, or at the equipment site. "Organizational-Level Maintenance" includes: inspection, service, lubrication, adjustment, calibration, preventive maintenance, limited repair, or replacement of equipment, as well as the replacement of parts, minor assemblies, and subassemblies.
- IX. "Software Maintenance" as used in this contract includes only the decompiling of the source code, repair of the code to accomplish its original purpose, and the recompiling of the source code regardless of whether or not the maintenance results in a new software

release version. "Software Maintenance" does not include enhancement of the source code capability.

- X. Other terms used in this special contract requirement that are defined in the following clauses have the same meaning in this clause as set forth in those clauses:
  - a. DFARS 252.227-7013;
  - b. DFARS 252.227-7014; and
  - c. DFARS 252.227-7015

**Delivery Requirements.** Pursuant to the applicable CDRLs, the contractor shall deliver all technical data and computer software documentation necessary for organizational and Depot level maintenance of the entire MS PROPRIETARY weapon system and equipment.

**General.** The contractor shall provide the technical data, development tools, and computer software documentation having characteristics (e.g.; content, format, and delivery medium) necessary for organizational and depot-level maintenance. The Government requirements for such technical data or computer software include:

- I. No less information or detail than industry standards, nor less than the Contractor typically requires or uses to perform such OMIT activities; and
- II. Additional information or detail necessary for military purposes related to OMIT activities.

**Depot-Level Maintenance Technical Data and Computer Software Documentation.** Technical data and computer software documentation described under Exhibits A, B and C must comprise a complete package of all technical data and computer software documentation necessary for maintenance for the entire MS PROPRIETARY Weapon System. This includes technical data and computer software documentation necessary for installation and de-installation, and disassembly and reassembly, at the lowest practicable segregable level that does not require detailed manufacturing or process information. Examples of technical data and computer software that are needed to perform maintenance include, but are not limited to, the following:

- I. Detailed technical data and information regarding all systems;
- II. Depot-Level and Organizational-Level Maintenance technical data and information regarding all systems, subsystems, and components;
- III. Interface Control Documents (ICDs);
- IV. Computer software source code necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance of computer programs and scripts;
- V. Computer software libraries used by source code necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance of computer programs and scripts;
- VI. Computer software compilers and computer software tools necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance of computer programs and scripts; and
- VII. Computer software and computer software documentation necessary to perform Depot-Level Maintenance or Organizational-Level Maintenance on computer programs and scripts

**License Rights.** Pursuant to the contract clauses governing rights in technical data and computer software (e.g., DFARS 252.227-7013, 252.227-7014, and 252.227-7015), the Government is granted unlimited rights in technical data (other than DMPD) required for OMIT/FFF activities and computer software documentation.

**Technical Data and Computer Software of Subcontractors and Suppliers.** The Contractor's obligations in this special contract clause shall apply to all Technical Data and Computer Software, including all Technical Data and Computer Software developed, delivered, or otherwise provided by subcontractors or suppliers at any tier, and regardless of whether the Technical Data and Computer Software is or relates to commercial items or noncommercial items. The Contractor shall include these requirements in its subcontracts or other contractual or legal instruments with its subcontractors or suppliers at any tier.

Validation of Asserted Restrictions and Restrictive Markings. Nothing in this special contract requirement limits or otherwise affects the parties' rights or obligations specified in DFARS 252.227-7019 or DFARS 252.227-7037.

Mapping/documenting data and licensing information: The Contractor shall provide documentation to clearly correlate or map OMIT and FFF data information as well as related license(s) to Section J Attachment #11 which includes:

- I. The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)
  - a. Contract Line Item Number (CLIN);
  - b. Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions
- II. It should be understood that the Offeror/Contractor must provide sufficient information, so that a 3rd party observer can readily determine where certain OMIT and FFF data corresponding to certain license(s) are physically located on the System to be delivered under the contract-to the extent that said OMIT and FFF data resides on the System.
- III. Note 1: Applicability to subcontractor(s), vendor(s) or supplier(s): Whenever any Technical Data/Software Documentation (i.e. OMIT/FFF data) is obtained from a subcontractor, vendor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in its subcontract(s) or other contractual instrument(s), and require its subcontractor, vendor or supplier to do so, without alteration, except to identify parties. No other clauses shall be used to enlarge or diminish the Government's, the Contractor's, or a higher tier subcontractor's, vendor's or supplier's rights in said Technical Data/Software Documentation (i.e. OMIT/FFF data). The Contractor shall provide documentation to clearly correlate or map software license(s) to: (Please see: Section J Attachment #11)
  - a. Contract Line Item Number (CLIN); and
  - b. Contractor Reference Architecture element corresponding to or containing the component or item furnished with restrictions.
- IV. It should be understood that the Offeror/Contractor must provide sufficient information, so a 3rd party observer can readily determine where certain OMIT and FFF data corresponding the certain license(s) are physically located on the System to be delivered under the contract-to the extent that said OMIT and FFF data resides on the System.

#### **H-0005, USED AIRCRAFT ACCEPTABILITY CRITERIA (UAAC) (April 2022)**

The Used Aircraft Acceptability Criteria are listed below, for compliance with EMD Statement of Work Section 2.1, Production Statement of Work Section 7.1, and any other applicable sections of the Statements of Work and Section J Attachments:

1. Only one aircraft operator (other than OEM) since initial fielding;
2. Not used for transport of "large animals" as described by FAA AC 120-85B section 2.6.3.15.20;
3. Continuous adherence to FAA\* airworthiness standards via standard AW certificate while in an operational state, or with FAA approved methods and conditions during period(s) of storage \*or an ICAO country civil AW authority with a bilateral agreement with the FAA;
4. Must receive an export certificate of airworthiness and be conformable to a US AW certificate, if applicable;
5. Not involved in any "accident" as defined in FAA Order 8020.11D Change 1 17 Sep 2021, Chapter 1 Paragraph 7.b; and that the contractor disclose - and remediate - any consequences of an "incident" as defined in FAA Order 8020.11D Change 1 17 Sep 2021, Chapter 1 Paragraph 7.j at delivery to the government;
6. All installed parts must be approved to AC-20-62E Change 1 14 Sep 2018 - Eligibility, Quality, and Identification of Aeronautical Parts or accepted by the FAA; and

7. As of RFP release, no more than 6 years since production line of the aircraft/engine series closed. Within the given MS PROPRIETARY fleet size, all aircraft engines shall be listed on the same type certification data sheet.

#### **H-0006 MS PROPRIETARY PROGRAM OFFICE SUPPORT CONTRACTORS (July 2024)**

The Government has Advisory and Assistance Services (A&AS) contracts and contracts with Federally Funded Research and Development Centers (FFRDCs) to provide support to the MS PROPRIETARY program. The Government has contracted with the MITRE Corporation under an Air Force contract; Oasis Systems, Inc (Astrion), Huntington Ingalls Industries, Mainsail, and USfalcon, Inc under the Engineering, Professional, and Administrative Support Services (EPASS) contract; and John Hopkins University/Applied Physics Laboratory (JHU/APL) under a Washington Headquarters Services contract. The Government's contract with each A&AS service provider and FFRDC prohibit unauthorized dissemination of data to which the company or its employees have access.

In accordance with AFLCMC/CC policy, Hanscom organizations have blanket approval to use non- Government EPASS personnel in source selections and sole source evaluations. In such cases, the Source Selection Authority (SSA) shall ensure that non-Government personnel do not serve as SSA, do not serve as a member of the Past Performance Team (PPT), do not serve as the chairperson of a Source Selection Evaluation Board (SSEB), do not serve as the chairperson of a Source Selection Advisory Council (SSAC), and do not have any prohibited financial interests with any of the proposed offerers. In addition, the Procuring Contracting Officer (PCO) shall ensure organizational conflicts of interest are avoided, neutralized, or mitigated prior to the use of non-Government personnel.

A&AS and FFRDC contractors have agreed not to engage in the manufacture or production of hardware or software which is related to the MS PROPRIETARY Program and shall not disclose proprietary information to unauthorized personnel. The Contractor agrees to cooperate with the above described AFLCMC A&AS and FFRDC support contractors by engaging in technical discussions with their personnel and by providing their personnel access to information and data relating to programmatic and technical matters concerning this contract to the same degree such access is afforded Government personnel.

From time to time, the list of Contractors may change. If this occurs, the list may be altered by written notification from the Contracting Officer to the Contractor without cost impact to this contract. No A&AS or FFRDC Contractor shall be allowed to visit Contractor facilities without prior approval by both the Contractor and MS PROPRIETARY Program Management. Modification of the Contractor's technical effort and/or contract requirements shall be affected only by the written direction of the Contracting Officer. In the event the action of any support Contractor is construed to be direction, the Contracting Officer shall be notified in accordance with the "Notification of Changes" clause.